

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jonathan Phillips	Team: Team # 6	CCRB Case #: 201111135	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 08/18/2011 7:31 PM	Location of Incident: § 87(2)(b) § 87(2)(b)	Precinct: 81	18 Mo. SOL 2/18/2013	EO SOL 2/18/2013	
Date/Time CV Reported Thu, 08/18/2011 7:16 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 08/30/2011 1:59 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Michael Scoloveno	05901	931194	GANG BN
2. POM Bilal Ates	03360	934429	GANG BN
3. SGT Michael Lennihan	02344	927076	GANG BN
4. Officers			GANG BN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 John Holland	04102	920399	GANG BN

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Discourtesy: Officers spoke obscenely and rudely to § 87(2)(b)	§ 87(2)(b)
B.SGT Michael Lennihan	Abuse: Sgt. Michael Lennihan supervised the entry and search of § 87(2)(b) located at § 87(2)(b) in Brooklyn.	§ 87(2)(b)
C.DT3 Michael Scoloveno	Force: Det. Michael Scoloveno pointed his gun at § 87(2)(b)	§ 87(2)(b)
D.POM Bilal Ates	Force: PO Bilal Ates pointed his gun at § 87(2)(b)	§ 87(2)(b)
E.DT3 Michael Scoloveno	Discourtesy: Det. Michael Scoloveno spoke obscenely and rudely to § 87(2)(b)	§ 87(2)(b)
F.POM Bilal Ates	Discourtesy: PO Bilal Ates spoke obscenely and rudely to § 87(2)(b)	§ 87(2)(b)
G. Officers	Discourtesy: Officers spoke obscenely and rudely to § 87(2)(b)	§ 87(2)(b)
H.POM Bilal Ates	Force: PO Bilal Ates used physical force against Donavan § 87(2)(b)	§ 87(2)(b)
I.POM Bilal Ates	Force: PO Bilal Ates struck § 87(2)(b) with a flashlight.	§ 87(2)(b)
J.POM Bilal Ates	Discourtesy: PO Bilal Ates spoke obscenely and rudely to § 87(2)(b)	§ 87(2)(b)

## Case Summary

§ 87(2)(b) was connected to the Internal Affairs Bureau (IAB) on August 18, 2011, and she reported the following incident. IAB assigned the complaint log #11-38766 and forwarded it to the Civilian Complaint Review Board (CCRB) on August 30, 2011 (*encl. 8*).

At approximately 7:31 p.m. on August 18, 2011, Sgt. Michael Lennihan, Det. Michael Scoloveno, and PO Bilal Ates – all of Brooklyn North Gang Squad – entered § 87(2)(b) located at § 87(2)(b) in Brooklyn and arrested § 87(2)(b) and § 87(2)(b). The following allegations resulted from this incident:

- **Allegation A: Discourtesy: Officers spoke obscenely and rudely to § 87(2)(b)**

§ 87(2)(g)

- **Allegation B: Abuse of Authority: Sgt. Michael Lennihan supervised the entry and search of § 87(2)(b) located at § 87(2)(b) in Brooklyn.**

§ 87(2)(g)

- **Allegation C: Force: Det. Michael Scoloveno pointed his gun at § 87(2)(b)**
- **Allegation D: Force: PO Bilal Ates pointed his gun at § 87(2)(b)**

§ 87(2)(g)

- **Allegation E: Discourtesy: Det. Michael Scoloveno spoke obscenely and rudely to § 87(2)(b)**

§ 87(2)(b)

- **Allegation F: Discourtesy: PO Bilal Ates spoke obscenely and rudely to § 87(2)(b)**

§ 87(2)(g)

- **Allegation G: Discourtesy: Officers spoke obscenely and rudely to § 87(2)(b)**

- **Allegation H: Force: PO Bilal Ates used physical force against § 87(2)(b)**

- **Allegation I: Force: PO Bilal Ates struck § 87(2)(b) with a flashlight.**

- **Allegation J: Discourtesy: PO Bilal Ates spoke obscenely and rudely to § 87(2)(b)**

§ 87(2)(b)

§ 87(2)(g)

## Results of Investigation

### Civilian Statements

#### Complainant/Victim: § 87(2)(b)

- *At the time of the incident § 87(2)(b) was a § 87(2)(b)-old Hispanic female with brown hair and brown eyes who stood 5'4", 200 lbs.*

### CCRB Statements

§ 87(2)(b) reported this incident to IAB on August 18, 2011 (*encl. 8*). She was interviewed by IAB Group #9 on August 19, 2011 (*encl. 10*). She provided a telephone statement to the CCRB on September 7, 2011 (*encl. 11*), and was formally interviewed at the CCRB on September 14, 2011 (*encl. 12*). § 87(2)(g)

At approximately 6:30 p.m. on August 18, 2011, § 87(2)(b) – a friend of § 87(2)(b)'s two sons – arrived at her apartment with three teenaged Hispanic males whom § 87(2)(b) denied knowing by name. § 87(2)(b) treated § 87(2)(b) and his friends to some juice and she braided § 87(2)(b)'s hair. None of § 87(2)(b)'s sons were home at the time. § 87(2)(b) and his friends left § 87(2)(b)'s apartment around 7:00 p.m. and § 87(2)(b) entered the bathroom and used the toilet. She did not lock the door to her apartment when § 87(2)(b) and his friends left because she was anticipating § 87(2)(b) to return later that evening.

During the five minutes that § 87(2)(b) was in the bathroom she heard no voices and she heard nobody enter her apartment. As she sat on the toilet § 87(2)(b) heard loud bangs on her front door and, suspecting that it was § 87(2)(b) returning to the apartment, yelled, "It's open! What the fuck!" The banging persisted and § 87(2)(b) exited the bathroom and approached the front door where she discovered that the door was locked. From the hallway outside the door § 87(2)(b) heard several voices screaming, "Open the door! Open the fucking door! We know he's in there!" § 87(2)(b) looked through her peephole and saw three plain-clothed white males – identified by the investigation as Sgt. Michael Lennihan, Det. Michael Scoloveno, and PO Bilal Ates - standing outside; none of the men had their shields displayed and § 87(2)(b) did not know that they were police officers.

§ 87(2)(b) became confused because she thought that she was alone inside her apartment and she dialed 911 to report that three men claiming to be police officers were banging on her door. From the hallway, § 87(2)(b) heard the voices yelling, "It's the police! Open the door! We know he's in there! Open the fucking door!" § 87(2)(b) tried to unlock the door but the lock was jammed and it would not turn. Through the door, § 87(2)(b) yelled that the lock was jammed and a voice on the opposite side of the door yelled, "Move back! Move away from the door!" Because the door was closed § 87(2)(b) did not see which officer standing outside her door made the aforementioned comments. The officers kicked the door down, causing dents to it, and entered § 87(2)(b)'s apartment.

Det. Scoloveno (described as a white male in his thirties who stood 5'11", 170 lbs.) and PO Ates (described as a Hispanic male with black gelled hair in his thirties who stood 5'11", weighed over 250 lbs., and who had a dark skin complexion) entered the apartment with their guns drawn and pointed at § 87(2)(b). § 87(2)(b) did not report that the officers pointed their guns at her in her telephone statement, and stated only that they entered the apartment with their guns drawn. Det. Scoloveno yelled, "Stay right there! Don't fucking move! Where the fuck is he?" § 87(2)(b)

began to cry and she asked the officers if they had a warrant. In response, PO Ates yelled, “Shut the fuck up, bitch! Yeah, I got your fucking warrant! If you don’t tell us where the fuck he’s at you’re going to get arrested, too! Where the fuck is he!” § 87(2)(b) told PO Ates that she was alone inside the apartment and PO Ates yelled, “Don’t fucking lie!” In her telephone statement provided on September 7, 2011, § 87(2)(b) reported that the officers told her to “get the fuck down,” “sit the fuck down,” and “shut the fuck up, you know where he’s at.” When interviewed by IAB on August 19, 2011, § 87(2)(b) reported that the officers yelled to her, “you know what the fuck is going on! Where the fuck is he?”

Det. Scoloveno and PO Ates entered the bedroom of § 87(2)(b)’s sons and Sgt. Lennihan (described as a white male who stood 5’9” and who appeared in his thirties and whom § 87(2)(b) could not describe in additional detail) remained with § 87(2)(b) in the living room. As § 87(2)(b) stood in the living room she heard a voice from the bedroom yell, “We got him! Get the fuck down!” § 87(2)(b) did not see which officer inside the bedroom made this comment. § 87(2)(b) walked towards the entrance to the bedroom and she saw § 87(2)(b) seated in a fetal position on the floor, covering his face with his left arm. PO Ates stepped onto § 87(2)(b)’s face and then struck § 87(2)(b) in the middle of the face one time with a black object that was approximately twelve inches in length and which § 87(2)(b) thought resembled a flashlight. § 87(2)(b) was not in handcuffs when he was struck with the flashlight and he never attempted to strike, punch, or kick either Det. Scoloveno or PO Ates. Before the door to the bedroom was closed shut § 87(2)(b) heard PO Ates ask § 87(2)(b) “You want to fucking run, pussy?”

When the door to the bedroom was shut § 87(2)(b) heard voices inside the bedroom yelling, “Where’s the fucking gun? Where’s the fucking gun?” § 87(2)(b) heard § 87(2)(b) yell, “Please stop hitting me! Stop hitting me! I don’t have a gun!” As the yelling continued § 87(2)(b) eventually heard § 87(2)(b) state that the gun was on top of the bed. Soon after, the officers opened the bedroom door and pushed § 87(2)(b) out into the living room. § 87(2)(b) was handcuffed and was bleeding from his mouth. PO Ates told § 87(2)(b) “You’re not so tough now, right? You little pussy. Shut the fuck up.” § 87(2)(b) asked Sgt. Lennihan whether she could wipe the blood from § 87(2)(b)’s face and PO Ates yelled, “If you fucking touch him, I’m going to fucking arrest you, too!” In the telephone statement § 87(2)(b) provided on September 7, 2011, she alleged that PO Ates told her, “Fuck that little pussy. Let him bleed to death.”

At the time that this comment was made Det. Scoloveno was inside the bedroom searching for the gun. § 87(2)(b) saw Det. Scoloveno remove the mattress from her son’s bed and toss the clothing and sneakers positioned on top of the bed to the floor. § 87(2)(b) placed another telephone call to 911 to report the injury to § 87(2)(b). The 911 operator asked § 87(2)(b) to hand the phone over to one of the officers inside the apartment and she extended her arm to deliver the phone to PO Ates. PO Ates yelled, “Get that out of my fucking face.” § 87(2)(b) spoke into the phone and repeated exactly what PO Ates had told her to the 911 operator.

PO Ates then searched the kitchen for the gun and he opened the stove, refrigerator, and cabinets inside the kitchen. He then removed the mattress from § 87(2)(b)’s bed – which was in the living room - and opened all of the drawers of her nightstand cabinet and dresser. Inside the drawers of the dresser, PO Ates discovered about two-hundred prescription sleeping pills, Suboxone and Ambien, which § 87(2)(b) was storing for a friend, and an unknown quantity of marijuana, stored inside the same dresser drawer. After making the discovery of the narcotics, PO Ates turned to Det. Scoloveno and Sgt. Lennihan and said, “Cuff that bitch, too.” § 87(2)(b) was handcuffed and

removed from the apartment with § 87(2)(b). No gun was recovered from the apartment. In total, the officers were inside § 87(2)(b)'s apartment for about forty-five minutes; in her telephone statement provided to the CCRB on September 7, 2011, § 87(2)(b) stated that the search of the apartment performed by PO Ates alone lasted over two hours.

**Victim:** § 87(2)(b)

- *At the time of the incident, § 87(2)(b) was a § 87(2)(b)-old Hispanic male with brown hair and brown eyes who stood 5'10", 200 lbs.*

**Statement to IAB**

§ 87(2)(b) was interviewed by IAB Group #9 on August 19, 2011 (*encl. 14*). As discussed below, the CCRB never obtained a verified statement about this incident from § 87(2)(b).

According to § 87(2)(b) he was standing in front of § 87(2)(b) with a group of people when a car reversed down Herkimer Street at nearly one-hundred miles-per-hour and several plainclothed men (whom § 87(2)(b) denied knowing were police officers) jumped out of the vehicle with their guns in hand and ran towards § 87(2)(b).

Because § 87(2)(b) did not know that the men were police officers he ran in the opposite direction into the § 87(2)(b)-floor apartment owned by § 87(2)(b) at § 87(2)(b) and hid in the closet. Apart from not knowing that the armed men chasing him were police officers, § 87(2)(b) provided no other explanation as to why he ran and hid in the closet.

The officers broke the door to § 87(2)(b)'s apartment down and dragged § 87(2)(b) out of the closet. PO Bilal Ates (described only as a large, light-skinned male whose race § 87(2)(b) was uncertain of) struck § 87(2)(b) in the lip three times with a flashlight. § 87(2)(b) began bleeding from his lip (*encl. 14C-E*) and was handcuffed. He received four stitches to his lip at § 87(2)(b). IAB obtained no other information from § 87(2)(b) about this incident.

**Attempts to Contact Civilians**

Between September 7 and September 29, 2011, the undersigned investigator mailed two contact letters – which have not been returned to the CCRB via the United States Postal Service – and placed five telephone calls to § 87(2)(b). § 87(2)(b) contacted the investigator over the telephone on September 30, 2011, and scheduled an appointment to be interviewed at the CCRB on October 3, 2011. § 87(2)(b) failed to appear for this interview and he did not call in advance to either cancel or reschedule it.

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§ 87(2)(b)

## **NYPD Statements:**

### **Subject Officer: DETECTIVE MICHAEL SCOLOVENO**

- *At the time of the incident, Det. Scoloveno was a § 87(2)(b)-old white male with black hair and brown eyes who stood 5'10", 160 lbs.*
- *On August 18, 2011, Det. Scoloveno was assigned to gang enforcement with PO Bilal Ates and Sgt. Michael Lennihan. He worked from 3:00 p.m. until 11:33 p.m. and was dressed in plainclothes. Det. Scoloveno was assigned to rental auto #44856, a sedan.*

### **Memo Book**

At 7:30 p.m. Det. Scoloveno made two arrests at § 87(2)(b) for § 87(2)(b). Det. Scoloveno began arrest processing at the 81<sup>st</sup> Precinct at 8:00 p.m. (encl. 16).

### **Arrest-Related Documents**

Det. Scoloveno was assigned the arrests of § 87(2)(b) and § 87(2)(b). The arrest reports (encl. 17-18), criminal complaint reports, and supporting depositions (encl. 21-22) completed by him were consistent with his statement outlined below. The arrest report completed for § 87(2)(b) shows that physical force was used against him in order to control/restrain/remove. § 87(2)(b) was charged with § 87(2)(b).

§ 87(2)(b) was charged with § 87(2)(b). The property vouchers associated with § 87(2)(b)'s arrest (encl. 20) show that thirteen inmate identification cards, two plastic bags containing marijuana, ninety-six Suboxone pills, and one-hundred-and-twenty pills of Ambien were recovered from her apartment, which according to the criminal court complaint (encl. 22), were recovered from a living room dresser.

### **CCRB Testimony**

Det. Scoloveno was interviewed at the CCRB on March 9, 2012 (encl. 23). At approximately 7:30 p.m. on August 18, 2011, Det. Scoloveno, Sgt. Lennihan, and PO Ates were travelling back to the 81<sup>st</sup> Precinct in Brooklyn and were travelling down Troy Avenue, which intersects with Herkimer Street. PO Ates was the operator, Det. Scoloveno was seated in the front passenger's seat, and Sgt. Lennihan was seated in the rear of the vehicle. As the police vehicle drove past Herkimer Street Det. Scoloveno saw § 87(2)(b) standing about forty yards away with a group of four other males. The group of individuals were standing about ten feet away from the entrance to § 87(2)(b) and Det. Scoloveno could not recall how fast the vehicle was moving.

§ 87(2)(b) lifted his white t-shirt and displayed an object which Det. Scoloveno suspected was the handle of a gun to the other males in the group. Det. Scoloveno saw the object for a brief moment of time, which he estimated lasted a few seconds, before § 87(2)(b) covered the object with his t-shirt. Det. Scoloveno described the object as one that was black in color and which was a few inches in length. The object was positioned in the center of § 87(2)(b)'s waistband near where one's belt would be. Det. Scoloveno saw no bulges protruding out of § 87(2)(b)'s pants, where the barrel of the gun would have been based on Det. Scoloveno's description of where the handle was. He saw no gun holster. When questioned during his CCRB interview why he suspected that the object he saw was gun, Det. Scoloveno stated that he has seen guns before, has made prior gun possession arrests during his career as a police officer, and thought based on

the color of the object (black) and the location where it was stored (waistband) that it resembled a gun. Prior to this incident, Det. Scoloveno had no interaction with § 87(2)(b)

Det. Scoloveno alerted his partners to his observation and PO Ates stopped the vehicle. Det. Scoloveno was the only officer inside the vehicle who saw § 87(2)(b) lift his shirt and display the black object. Sgt. Lennihan exited the vehicle, displayed his shield, approached the group of individuals on the sidewalk, and identified himself as a police officer. Sgt. Lennihan's goal was to approach § 87(2)(b) and question him about the object that Det. Scoloveno suspected was a firearm. The group of males fled on foot in the opposite direction down Herkimer Street and § 87(2)(b) ran into § 87(2)(b). Det. Scoloveno exited the vehicle and gave chase to § 87(2)(b) into the building. When Det. Scoloveno reached the first-floor lobby of the building he saw § 87(2)(b) enter an apartment located on the first floor and slam the door shut.

Through the closed door Det. Scoloveno yelled, "Open the door! Open the door! Police open the door!" No officer used profanity in ordering the door to be opened and no officer said, "Open the fucking door!" § 87(2)(b) yelled through the door that she was not opening the door because she did not know who Det. Scoloveno and his partners were. She repeatedly screamed that nobody else was in the apartment. Det. Scoloveno repeated the commands to open the door for about five minutes and removed his gun and pointed it towards the door because he was in pursuit of what he believed was an armed suspect and he feared for his safety. Because § 87(2)(b) refused to open the door Det. Scoloveno kicked it open with about two kicks. Det. Scoloveno denied that he or any of his partners aimed the gun at § 87(2)(b) once the door was breached.

Det. Scoloveno ordered § 87(2)(b) to sit on the couch and questioned her about the whereabouts of § 87(2)(b). § 87(2)(b) denied that anyone else was inside the apartment. § 87(2)(b) was on the phone speaking to 911 but Det. Scoloveno denied seeing her attempt to hand the phone over to either him or his partners. § 87(2)(b) never requested to see a warrant and Det. Scoloveno denied that any officer threatened to arrest her, called her a "bitch" or used the word "fuck" in speaking to her. He denied that any officer used profanity in speaking to § 87(2)(b) and denied all of the outstanding comments involving obscene language alleged by § 87(2)(b).

Sgt. Lennihan remained with § 87(2)(b) in the living room and Det. Scoloveno and PO Ates performed a canvass of the apartment to locate § 87(2)(b). Det. Scoloveno searched in the bathtub and behind the bathroom door and he entered a bedroom located in the rear of the apartment. There, he discovered § 87(2)(b) hiding in the closet. When Det. Scoloveno opened the closet door § 87(2)(b) punched him multiple times in the torso with a closed fist and kicked him in the torso. Det. Scoloveno holstered his weapon and punched § 87(2)(b) in the torso, chest, and face several times with a closed fist, but Det. Scoloveno could not recall the exact number of times he punched § 87(2)(b) or what part of § 87(2)(b)'s face he made contact with. Det. Scoloveno punched § 87(2)(b) to overcome § 87(2)(b)'s resistance and to avoid being punched and kicked by him.

PO Ates walked over and both he and Det. Scoloveno grabbed § 87(2)(b) by the arms and pulled him to the ground. § 87(2)(b) landed on his stomach and he tucked his hands beneath his body. Once on the ground the only force used against § 87(2)(b) by PO Ates and Det. Scoloveno was reaching for his arms in an effort to pull them behind his back and handcuff him. Neither PO Ates nor Det. Scoloveno struck § 87(2)(b) in the face with a flashlight or other hard instrument, and no other force was used against him. § 87(2)(b) was eventually handcuffed and removed into the living room. § 87(2)(b) had a small amount of blood near his

lip, but Det. Scoloveno denied knowing what caused him to bleed. Det. Scoloveno sustained no injuries as a result of § 87(2)(b)'s resistance. He denied that he or PO Ates used any profanity or obscene language, including the words "fuck" and "pussy," while speaking to § 87(2)(b). He denied that any of the comments alleged by § 87(2)(b) were made.

Det. Scoloveno performed a visual protective sweep of the apartment to locate the firearm. The areas that he looked included the areas in plain-view in the living room and the bedroom. Det. Scoloveno looked underneath the bed, on top of the bed, and on the windowsill, and he denied that he or PO Ates opened any drawers or cabinets or searched inside the refrigerator or stove. During the approximate ten-minute search Det. Scoloveno discovered a large amount of Xanax pills and marijuana stored inside of condoms, both of which were positioned in plain-view on top of a plastic drawer unit that one would buy at Staples near the bed positioned in the living room. § 87(2)(b) was placed into handcuffs and Det. Scoloveno denied that he or PO Ates said, "cuff that bitch." The officers left the apartment thereafter, and they did not consider getting a warrant to search the apartment because § 87(2)(b) was bleeding and requested medical treatment.

**Subject Officer: PO BILAL ATEs**

- *At the time of the incident, PO Ates was a § 87(2)(b)-old white male with black hair and brown eyes who stood 6', 285 lbs.*
- *On August 18, 2011, PO Ates was assigned to gang enforcement with Det. Michael Scoloveno and worked from 3:00 p.m. until 11:33 p.m. PO Ates was dressed in plainclothes and was assigned to a tan Hyundai Sonata. PO Ates was the driver.*

**Memo Book**

At 7:31 p.m. PO Ates noted that Det. Scoloveno made two arrests. PO Ates returned to the command at 8:00 p.m. and he left for § 87(2)(b) via EMS with § 87(2)(b) at 8:40 p.m. (encl. 27).

**CCRB Testimony**

PO Ates was interviewed at the CCRB on May 11, 2012 (encl. 28). § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

PO Ates stated that as he was passing by Herkimer Street while driving down Troy Avenue Det. Scoloveno yelled, "gun, gun, gun." Det. Scoloveno was the only officer inside the vehicle that made the observation and he reported no other information about his observation to either PO Ates or Sgt. Lennihan.

PO Ates stopped the car and both Det. Scoloveno and Sgt. Lennihan exited the vehicle and began running down Herkimer Street towards a group of about three to four males who were running in the opposite direction of the officers. When PO Ates first saw the group of males they were standing about one-hundred feet away from the police vehicle. PO Ates saw no bulges on any of the males in the group and he did not see the gun that Det. Scoloveno had alerted him to. PO Ates put the car into reverse and drove in reverse down Herkimer Street.

Det. Scoloveno ran into § 87(2)(b) and PO Ates lost sight of him as he continued reversing the vehicle down Herkimer Street. When PO Ates arrived inside of § 87(2)(b) § 87(2)(b) Det. Scoloveno informed him that the individual he had seen with the gun had run into an apartment located on the ground floor. In the hallway outside the door PO Ates and Det.



Scoloveno yelled, “Police! Open the door! Open up!” Both officers repeated numerous commands for the door to be opened, but no profanity was used. PO Ates could not recall the whereabouts of Sgt. Lennihan during this time, and he did not recall if he was present in the hallway.

Det. Scoloveno kicked the door an unknown number of times and forced entry into the apartment. At the time that Det. Scoloveno kicked the door both he and PO Ates had their guns pointed at the door because they were in pursuit of an armed suspect and feared for their safety. When the door was breached the officers entered the apartment and saw § 87(2)(b) standing to the right of the door in the living room/kitchen space. Neither officer pointed his gun at § 87(2)(b) § 87(2)(b) was screaming incoherently into her phone, but PO Ates could not recall what she was saying and denied seeing her ever attempt to hand the phone to any of the officers. PO Ates denied that he, Det. Scoloveno, or Sgt. Lennihan used profanity in speaking to § 87(2)(b) and he denied that any of outstanding comments involving obscene, offensive, and profane language alleged by § 87(2)(b) were made. None of the officers, including PO Ates, threatened to arrest § 87(2)(b) if she refused to disclose § 87(2)(b)s whereabouts.

Det. Scoloveno and PO Ates searched the living room and bedroom to locate § 87(2)(b). Inside the bedroom PO Ates leaned over and got onto one knee and searched underneath the bed in search of § 87(2)(b). PO Ates held his gun in his hand as he did so and his back was turned towards Det. Scoloveno, who was searching the bedroom closet about four feet behind PO Ates. As PO Ates was on his knee searching underneath the bed, he heard Det. Scoloveno yell out, “Police! Give me your hands!” PO Ates turned around and saw § 87(2)(b) swing his hand with a closed fist and strike Det. Scoloveno one time with his fist, but PO Ates could not recall where exactly § 87(2)(b) made contact with Det. Scoloveno. § 87(2)(b) kicked Det. Scoloveno in the mid-section one time. § 87(2)(b) had no objects in his hands.

PO Ates holstered his gun, lifted himself to his feet, and both he and Det. Scoloveno grabbed § 87(2)(b) (PO Ates could not recall where exactly on § 87(2)(b)s body he grabbed) and pulled § 87(2)(b) to the ground. § 87(2)(b) landed face-first against the floor on his stomach. PO Ates and Det. Scoloveno landed on top of § 87(2)(b) and the two officers reached to grab hold of § 87(2)(b)s hands. § 87(2)(b) flailed his arms and pulled them away from the officers. The only force used against § 87(2)(b) by Det. Scoloveno and PO Ates was reaching for his arms and pulling them behind his back. No other force was used and PO Ates denied that he or Det. Scoloveno struck § 87(2)(b) with a flashlight or any other hard object. § 87(2)(b) was handcuffed within ten seconds of falling to the ground.

After § 87(2)(b) was handcuffed he was escorted out of his bedroom and was questioned about the whereabouts of the gun he was suspected of possessing. Neither Det. Scoloveno nor PO Ates used the word “fuck” or “pussy” while speaking to § 87(2)(b) and no profanity was used.

Det. Scoloveno discovered marijuana and several prescription pills in plain-view, but PO Ates could not recall the precise location within the living room that the drugs were discovered. The marijuana was packaged in balloons in a way that is commonly used by people transporting drugs into prisons. Once the drugs were discovered § 87(2)(b) was placed into handcuffs, but PO Ates could not recall which officer handcuffed her. He denied that any officer on scene, including himself, said, “cuff that bitch, too” in reference to § 87(2)(b).

The attempts made to locate the weapon that § 87(2)(b) was suspected of possessing consisted of scanning the immediate areas in plain-view. Each officer used his eyes and scanned both the bedroom and living room for the weapon. The areas that were searched were on top of the bed, underneath the bed, on the floor, and on top of both the furniture in the bedroom and living room. None of the officers opened any drawers or cabinets inside the apartment to locate the weapon. PO Ates did not recall hearing any conversation held involving Sgt. Lennihan about getting a search warrant to search the apartment for the weapon. When PO Ates arrived outside the building he saw Det. Holland and Det. Carlin standing outside, but stated that neither officer entered the apartment.

At the 81<sup>st</sup> Precinct stationhouse an ambulance was called to treat § 87(2)(b) who sustained a cut to his lip which PO Ates stated was caused when he fell to the ground and struck his face on the floor. § 87(2)(b) was bleeding only from his lip. § 87(2)(b) did not complain to PO Ates about the cause of his injury or of being struck with a flashlight.

**Subject Officer: SERGEANT MICHAEL LENNIHAN**

- *At the time of the incident Sgt. Lennihan was a § 87(2)(b)-old white male with brown hair and blue eyes who stood 5'9", 180 lbs.*
- *On August 18, 2011, Sgt. Lennihan was assigned to gang enforcement with Det. Michael Scoloveno and PO Bilal Ates. He was dressed in plainclothes and worked from 3:00 p.m. until 11:35 p.m. Sgt. Lennihan was assigned to rental auto #44856.*

**Memo Book**

At 7:31 p.m. Sgt. Lennihan recorded two arrests at § 87(2)(b). Sgt. Lennihan notified IAB about the incident and the report was assigned log § 87(2)(b). At 8:00 p.m. § 87(2)(b) was removed to § 87(2)(b) for medical treatment (*encl. 24*)

**Medical Treatment of Prisoner Form**

Sgt. Lennihan completed a report documenting the medical treatment § 87(2)(b) received (*encl. 25*). The report notes that § 87(2)(b) sustained a minor cut to his lip while fighting with the police, and that he did kick and fight the officers involved in his arrest. § 87(2)(b) complained of pain to his lip and jaw. He received medical treatment at § 87(2)(b) and § 87(2)(b).

**CCRB Testimony**

Sgt. Lennihan was interviewed at the CCRB on May 3, 2012 (*encl. 26*). § 87(2)(g)

Sgt. Lennihan confirmed that Det. Scoloveno was the only officer inside the police vehicle who made the observation of the armed suspect. When Det. Scoloveno alerted him to the armed suspect Sgt. Lennihan looked out the window and saw a group of five males standing on the sidewalk about two-hundred feet away.

Inside the building, Sgt. Lennihan and Det. Scoloveno repeated numerous commands for the door to be opened. Sgt. Lennihan denied that any profanity was used in ordering § 87(2)(b) to open the door. Sgt. Lennihan's gun was in his holster when the door was breached and he could not recall where the guns of Det. Scoloveno and PO Ates were; he had no recollection of either officer drawing his weapon or pointing it at § 87(2)(b) as they entered the apartment.

When the officers entered the apartment § 87(2)(b) was yelling, cursing, and screaming, but Sgt. Lennihan could not recall any specific comments made by her. § 87(2)(b) placed several telephone calls to 911 and requested police response to the apartment, and Sgt. Lennihan continually ordered her to disconnect the phone call because he and his team were police officers. § 87(2)(b) never attempted to hand any officer the phone and no officer inside the apartment used the word “fuck” in ordering her to get the phone away from them. § 87(2)(b) was questioned about the whereabouts of § 87(2)(b) and of the gun, but she denied that anybody else was inside the apartment and she denied that any gun was there. No officer threatened § 87(2)(b) with arrest if she did not disclose the whereabouts of § 87(2)(b).

Sgt. Lennihan remained with § 87(2)(b) in the living room of the apartment and PO Ates and Det. Scoloveno entered the bedroom and searched for § 87(2)(b). Det. Scoloveno opened the closet door and discovered § 87(2)(b) hiding in the closet. While Sgt. Lennihan stood at the entrance to the bedroom he saw § 87(2)(b) lunge forward towards Det. Scoloveno while swinging his arms and aiming an unknown number of punches at Det. Scoloveno. Det. Scoloveno punched § 87(2)(b) an unknown number of times, but Sgt. Lennihan could not recall how many times Det. Scoloveno punched him or where he made contact with § 87(2)(b). Sgt. Lennihan could not recall whether Det. Scoloveno punched § 87(2)(b) in the face.

Both Det. Scoloveno and PO Ates reached towards § 87(2)(b)'s arms in order to pull him out of the closet but § 87(2)(b) pulled his arms away from them. The officers then wrapped their arms around § 87(2)(b)'s waist and tackled him to the ground. § 87(2)(b) fell to the ground on his side and Sgt. Lennihan did not see his face make contact with the ground. § 87(2)(b) kicked his legs, pulled his arms away from Det. Scoloveno and PO Ates, and rolled over onto his stomach in an effort to avoid being handcuffed. The force used by Det. Scoloveno and PO Ates against § 87(2)(b) consisted only of reaching for and pulling his arms behind his back. No other force was used. Neither Det. Scoloveno nor PO Ates held any hard objects in their hands as they wrestled to gain control over § 87(2)(b)'s arms and neither officer struck § 87(2)(b) in the face with a hard object, specifically a flashlight, during the struggle.

§ 87(2)(b) was handcuffed within 20 seconds of falling to the floor. He had an injury to one of his eyes which Sgt. Lennihan stated was either a cut or bruising; Sgt. Lennihan did not know what caused the injury and he denied that PO Ates or Det. Scoloveno punched § 87(2)(b) in the eye or face or struck him in the face with a flashlight or any hard object. Once § 87(2)(b) was handcuffed he was removed to the living room and placed onto the couch.

From there, Det. Scoloveno performed a cursory search to locate the weapon. Det. Scoloveno entered the bathroom and searched the visible areas inside of it, and performed a visual scan of the areas in the living room. He then entered the single bedroom and searched both on top of and underneath the bed as well as in the closet. Sgt. Lennihan did not see Det. Scoloveno enter any dresser drawers, enclosed spaces, or underneath the mattress while he performed the search for the gun. Sgt. Lennihan and PO Ates remained inside the living room securing § 87(2)(b) and § 87(2)(b) and Det. Scoloveno was the only officer that looked for the weapon. Det. Scoloveno was alone inside the bedroom for no more than one minute.

Det. Scoloveno discovered marijuana inside the apartment during his search for the gun but Sgt. Lennihan did not know which room the marijuana was discovered or where exactly it was discovered. He had no knowledge of Det. Scoloveno opening any drawers or cabinets during his

search for the gun, and he did not recall if any other drugs were discovered by Det. Scoloveno. § 87(2)(b) was handcuffed once the drugs were discovered.

Sgt. Lennihan denied that any of the outstanding comments involving obscene and profane language alleged by § 87(2)(b) were directed towards § 87(2)(b) or § 87(2)(b). No officer cursed, used profanity, or made any offensive remarks as alleged by § 87(2)(b). No officer used the word “fuck,” “bitch,” or “pussy.”

**Witness Officer: DETECTIVE JOHN HOLLAND**

- *At the time of the incident, Det. Holland was a § 87(2)(b)-old white male with black hair and brown eyes who stood 5'11", 215 lbs.*
- *On August 18, 2011, Det. Holland was assigned to gang enforcement within the 77<sup>th</sup> Precinct with Det. John Carlin between 3:00 p.m. and 11:33 p.m. He was dressed in plainclothes and was assigned to rental auto #44514, a blue Toyota Camry.*

**Memo Book**

At § 87(2)(b) Det. Holland arrived at § 87(2)(b) with PO Ates in regards to an injured prisoner. Det. Holland made no memo book entries concerning his response or activity at § 87(2)(b) (encl. 29).

**CCRB Testimony**

Det. Holland was interviewed at the CCRB on May 11, 2012 (encl. 30). Det. Holland and Det. Carlin arrived at § 87(2)(b) in response to a telephone call that Det. Holland had received on his cell phone from Sgt. Lennihan requesting additional units at the location. Sgt. Lennihan sounded as if he was out of breath and he stated that he and his partners were chasing a group of males, one of whom was armed with a gun.

During the time that Det. Holland was on scene he remained outside the building securing a prisoner inside the vehicle, whom Det. Carlin had arrested at 7:00 p.m. Det. Holland never entered the building and he did not see Det. Carlin do so. After approximately ten minutes, Sgt. Lennihan and Det. Scoloveno walked out of the building with § 87(2)(b) and § 87(2)(b) both of whom were in handcuffs. Det. Holland did not observe any injuries to § 87(2)(b) and when presented the arrest photograph of him during his CCRB interview, stated that he did not recall seeing any blood on § 87(2)(b)'s shirt or recall seeing him bleeding from his face. From there, the officers left the scene en route to the 81<sup>st</sup> Precinct stationhouse.

At around 8:40 p.m. Det. Holland followed an ambulance containing § 87(2)(b) to § 87(2)(b). Det. Holland had no verbal interaction with § 87(2)(b) never heard him complain of injuries, had no knowledge why § 87(2)(b) received medical treatment, and he did not know what treatment or diagnosis § 87(2)(b) received at the hospital.

**Medical Records**

Because § 87(2)(b) was uncooperative with the investigation he never signed medical release forms and subpoenas for his medical records could not be sent. Consequently, § 87(2)(b)'s medical records were never obtained by the investigation.

## NYPD Documents

### SPRINT § 87(2)(b)

The recording of the two 911 calls placed by § 87(2)(b) were received by the CCRB and their contents are detailed below (*encl. 32*).

During the first one-minute-long phone call, § 87(2)(b) stated her name, address, and telephone number, and she reported that a man was banging on her door.

During the second approximate four-minute-long phone call § 87(2)(b) placed to 911, § 87(2)(b) was heard screaming hysterically in the background as the 911 operator addressed her:

§ 87(2)(b) "I understand you're officers but I want to know who's here! No my son's not here! Four of my son's friends were just here and they just left."

-A male voice is heard saying, "I understand."

§ 87(2)(b) continues yelling, "I'm on the phone with 911."

-The voice says, "We're the police."

§ 87(2)(b) screams again, "I understand but you're not telling me what's going on!"

-The voice says, "There's somebody in your house"

§ 87(2)(b) screamed, "Ok and I'm asking you who, but you refuse to tell me!"

§ 87(2)(b) then addresses the 911 operator and says, "I don't know what's going on. I was in the bathroom and the cops came in and they started banging on the door."

The 911 operator asked her whether she wanted to make a complaint and § 87(2)(b) provided her home address after saying, 'Yes.' The operator explained that she would connect § 87(2)(b) with IAB and told her to remain on the line.

§ 87(2)(b) is then heard screaming in the background, "The gun? What gun?"

-A voice says, "Shut the fuck up"

§ 87(2)(b) screams, "Wait a minute. I don't know what gun you're talking about. What are you doing? Can you please tell me what's going on?"

-A distinct male voice is heard in the background saying, "Just shut \_\_\_\_", but because § 87(2)(b) continues screaming incoherently the exact phrase made by the voice cannot be heard in its entirety.

Neither of the 911 recordings contain audio of either the 911 operator or IAB respondent instructing § 87(2)(b) to hand the phone over to one of the officers. There is no audio record of an officer telling § 87(2)(b) "Get that out of my fucking face," in reference to the telephone § 87(2)(b) was holding.

### Arrest for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

- § 87(2)(b) was reached over the telephone on October 19, 2012, and she stated that her criminal charges were adjourned in contemplation of dismissal in § 87(2)(b), but she did not know the exact date. § 87(2)(b) agreed to sign and return to the CCRB in a pre-stamped envelope an unsealing order, which was mailed to her on October 19, 2012. As of the date of this report, § 87(2)(b) has not responded to any of the follow-up contact attempts made by the CCRB regarding the unsealing order and it has not been received at the CCRB.

## Status of Civil Proceedings

- Neither § 87(2)(b) nor § 87(2)(b) have filed a Notice of Claim with the City of New York with regard to the incident as of July 25, 2012 (*encl.* 39).

### Civilian's Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
■ [REDACTED]  
[REDACTED]  
■ [REDACTED]  
[REDACTED]  
[REDACTED]  
■ [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
■ [REDACTED]  
[REDACTED]

## Civilian's CCRB History

- § 87(2)(b) has filed the following CCRB complaints (*encl. 6*):
- § 87(2)(b)  
[REDACTED]  
[REDACTED]
- There is no record of any other CCRB complaints involving § 87(2)(b) (*encl. 7*).

### Subject Officer's CCRB History

- Sgt. Michael Lennihan has been a member of the service for eleven years and there are no substantiated CCRB allegations against him (*encl. 3*).
- Det. Scoloveno has been a member of the service for ten years and there is one substantiated CCRB allegation against him (*encl. 4*):
  - In CCRB #200602010 an Abuse – Question allegation was substantiated against Det. Scoloveno. On July 12, 2006, the Board recommended that he receive instructions. In August, 2007, the NYPD administered instructions to Det. Scoloveno.
- PO Bilal Ates has been a member of the service for eight years and there is one substantiated CCRB allegation against him (*encl. 5*):
  - In CCRB #200704116 an Abuse – Premises Entered and/or Searched allegation was substantiated against PO Ates. On February 8, 2008, the Board recommended that he receive instructions. In September, 2008, the NYPD administered instructions to PO Ates.

## Conclusion

### Identification of Subject Officers

§ 87(2)(b) did not see the officer(s) who allegedly ordered her to open the “fucking door” and she therefore could not describe him. § 87(2)(g) provided descriptions of both Det. Scoloveno and PO Ates and both officers match the pedigree information. § 87(2)(g)

### Allegations Not Pleaded

§ 87(2)(g)

### Investigative Findings and Recommendations

- **Allegation A: Discourtesy: Officers spoke obscenely and rudely to** § 87(2)(b)

§ 87(2)(b) did not see the officer(s) who cursed at her to open the “fucking door” because the door was closed and she was on the opposite side of it. None of the officers involved in this incident admitted to using profanity in ordering § 87(2)(b) to open the door, § 87(2)(g)

- **Allegation B: Abuse of Authority: Sgt. Michael Lennihan supervised the entry and search of** § 87(2)(b) **located at** § 87(2)(b) **in Brooklyn.**

It is undisputed that Sgt. Lennihan and his team entered § 87(2)(b)'s apartment in pursuit of § 87(2)(b). Based on officer testimony and the 911 recording, it is undisputed that the officers were pursuing § 87(2)(b) because they suspected that he was armed with a gun.

Det. Scoloveno stated that as the police vehicle travelled by § 87(2)(b) and his group of friends on the sidewalk, § 87(2)(b) lifted his shirt and displayed a black object, which was positioned in § 87(2)(b)'s waistband, to his friends for a few seconds. Based on the object's color (black) and location on § 87(2)(b)'s body (waistband), and because Det. Scoloveno has seen guns before and has made numerous gun-related arrests during his NYPD career, he suspected that the object he saw § 87(2)(b) display to his friends was a weapon. This suspicion was bolstered by § 87(2)(b)'s flight from the officers after they stopped the police vehicle and approached him on foot.

The presence and location of a bulge observed on an individual's clothing is significant in determining whether it resembles a weapon, People v. DeBour, 40 N.Y. 2d 210, 223 (1976) (*encl. A*). Pocket bulges can be created by any number of innocuous objects that do not resemble weapons; waistband bulges, on the other hand, are considered telltale signs that an individual is armed with a weapon. Id.

§ 87(2)(g)  
[REDACTED]

- **Allegation C: Force: Det. Michael Scoloveno pointed his gun at § 87(2)(b)**
- **Allegation D: Force: PO Bilal Ates pointed his gun at § 87(2)(b)**

§ 87(2)(b) alleged that both Det. Scoloveno and PO Ates pointed their guns at her once the door to the apartment was breached. Both officers denied that their guns were ever pointed at § 87(2)(b) but admitted that they had them drawn and pointed towards the door to § 87(2)(b)'s apartment at the moment the door was breached. Because § 87(2)(b) was admittedly standing directly behind the door when it was breached, and Det. Scoloveno and PO Ates had their guns pointed towards the door, it is not unlikely that their weapons would have been pointed in § 87(2)(b)'s direction once the door was breached.

The New York City Police Department affords its officers broad discretion in drawing their weapon and permits them to do so anytime there is reason to fear that his or her life is endangered. There is no recognized distinction between drawing one's firearm and pointing it; where an officer is authorized to draw his weapon, he is also authorized to point it. *New York City Police Department v. Gliner*, OATH Index No. 955/00 (*encl. 1*).

§ 87(2)(g)  
[REDACTED]

- **Allegation E: Discourtesy: Det. Michael Scoloveno spoke obscenely and rudely to § 87(2)(b)**
- **Allegation F: Discourtesy: PO Bilal Ates spoke obscenely and rudely to § 87(2)(b)**

§ 87(2)(b) alleged that when Det. Scoloveno entered her apartment he yelled, "Don't fucking move! Where the fuck is he?" She also alleged that PO Ates told her to, "Shut the fuck up, bitch. I got your fucking warrant. Where the fuck is he?" In her telephone statement, § 87(2)(b) alleged that an officer, whom she did not describe, told her to, "shut the fuck up." Additionally, PO Ates allegedly said, "If you fucking touch him, I'm going to fucking arrest you, too" and, when § 87(2)(b)



§ 87(2)(b) attempted to hand him the phone, said, “Get that out of my fucking face.” Lastly, once the drugs inside the apartment were discovered, PO Ates allegedly said, “cuff that bitch, too.” All officers interviewed in connection with this incident denied that any of the aforementioned comments were made. § 87(2)(g)

Administrative courts have consistently held that police officers are permitted to resort to using profanity while dealing with the public in order to forcefully emphasize a command, gain compliance with an order or direction, or in the midst of a highly dangerous situation. *New York City Police Department v. Matias and Bitchatchi*; *New York City Police Department v. Murphy and Canovas* (encl. 2).

§ 87(2)(g)

§ 87(2)(g)

- **Allegation G: Discourtesy: Officers spoke obscenely and rudely to** § 87(2)(b)
- **Allegation H: Force: PO Bilal Ates used physical force against** § 87(2)(b)
- **Allegation I: Force: PO Bilal Ates struck** § 87(2)(b) **with a flashlight.**
- **Allegation J: Discourtesy: PO Bilal Ates spoke obscenely and rudely to** § 87(2)(b)

§ 87(2)(b)

As previously discussed, § 87(2)(b) never provided a verified statement about this incident to the CCRB. § 87(2)(b) failed to appear for a scheduled interview at the CCRB on October 3, 2011, and a total of five telephone calls and two letters were mailed to him prior to his death on October 16, 2011. § 87(2)(g)

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Team: 6

Investigator:	_____	Jonathan Phillips	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date